

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1289

(Reference to printed bill)

Page 1, between lines 1 and 2, insert:

“Section 1. Section 34-101, Arizona Revised Statutes, is amended to read:

34-101. Definitions

In this title, unless the context otherwise requires:

1. "Agent":

(a) Means any county, city or town, or officer, board or commission thereof, and irrigation, power, electrical, drainage, FLOOD PROTECTION and flood control districts, tax levying public improvement districts, and county or city improvement districts.

(b) Includes any county board of supervisors and any representative authorized by an agent to act as an agent for the purpose of authorizing necessary change orders to previously awarded contracts in accordance with guidelines established by rule of the agent, including the board of supervisors.

2. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.

3. "Construction":

(a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.

(b) Does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property or demolition projects costing less than two hundred thousand dollars.

4. "Construction-manager-at-risk" means a project delivery method in which:

(a) There is a separate contract for design services and a separate contract for construction services.

1 (b) The contract for construction services may be entered into at the
2 same time as the contract for design services or at a later time.

3 (c) Design and construction of the project may be in sequential phases
4 or concurrent phases.

5 (d) Finance services, maintenance services, operations services,
6 preconstruction services and other related services may be included.

7 5. "Construction services" means either of the following for
8 construction-manager-at-risk, design-build and job-order-contracting project
9 delivery methods:

10 (a) Construction, excluding services, through the
11 construction-manager-at-risk or job-order-contracting project delivery
12 methods.

13 (b) A combination of construction and, as elected by the agent, one or
14 more related services, such as finance services, maintenance services,
15 operations services, design services and preconstruction services, as those
16 services are authorized in the definitions of construction-manager-at-risk,
17 design-build or job-order-contracting in this section.

18 6. "Contract" means all types of agent agreements, regardless of what
19 they are called, for the procurement of services pursuant to this title.

20 7. "Contractor" means any person who has a contract with an agent.

21 8. "Design-bid-build" means a project delivery method in which:

22 (a) There is a sequential award of two separate contracts.

23 (b) The first contract is for design services.

24 (c) The second contract is for construction.

25 (d) Design and construction of the project are in sequential phases.

26 (e) Finance services, maintenance services and operations services are
27 not included.

28 9. "Design-build" means a project delivery method in which:

29 (a) There is a single contract for design services and construction
30 services.

31 (b) Design and construction of the project may be in sequential phases
32 or concurrent phases.

1 (c) Finance services, maintenance services, operations services,
2 preconstruction services and other related services may be included.

3 10. "Design requirements":

4 (a) Means at a minimum the agent's written description of the project
5 or service to be procured, including:

6 (i) The required features, functions, characteristics, qualities and
7 properties.

8 (ii) The anticipated schedule, including start, duration and
9 completion.

10 (iii) The estimated budgets applicable to the specific procurement for
11 design and construction and, if applicable, for operation and maintenance.

12 (b) May include:

13 (i) Drawings and other documents illustrating the scale and
14 relationship of the features, functions and characteristics of the project,
15 which shall all be prepared by an architect or engineer, as appropriate, who
16 is registered pursuant to section 32-121.

17 (ii) Additional design information or documents that the agent elects
18 to include.

19 11. "Design services" means architect services, engineer services or
20 landscape architect services.

21 12. "Direct selection" means the selection of a technical registrant
22 without the requirement of advertising or the use of a current register.

23 13. "Engineer services" means those professional engineer services that
24 are within the scope of engineering practice as provided in title 32,
25 chapter 1.

26 14. "Finance services" means financing for a construction services
27 project.

28 15. "Horizontal construction" means highways, roads, streets, bridges,
29 canals, floodways, earthen dams and landfills.

30 16. "Job-order-contracting" means a project delivery method in which:

31 (a) The contract is a requirements contract for indefinite quantities
32 of construction.

1 (b) The construction to be performed is specified in job orders issued
2 during the contract.

3 (c) Finance services, maintenance services, operations services,
4 preconstruction services, design services and other related services may be
5 included.

6 17. "Landscape architect services" means those professional landscape
7 architect services that are within the scope of landscape architectural
8 practice as provided in title 32, chapter 1.

9 18. "Maintenance services" means routine maintenance, repair and
10 replacement of existing facilities, structures, buildings or real property.

11 19. "Materials":

12 (a) Means all property, including equipment, supplies, printing,
13 insurance and leases of property.

14 (b) Does not include land, a permanent interest in land or real
15 property or leasing space.

16 20. "Operations services" means routine operation of existing
17 facilities, structures, buildings or real property.

18 21. "Person" means any corporation, business, individual, union,
19 committee, club, other organization or group of individuals.

20 22. "Preconstruction services" means advice during the design phase.

21 23. "Procurement":

22 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
23 any materials, services, construction or construction services.

24 (b) Includes all functions that pertain to obtaining any material,
25 services, construction or construction services, including description of
26 requirements, selection and solicitation of sources, preparation and award of
27 contract and all phases of contract administration.

28 24. "Public competition" means a competitive procurement process
29 pursuant to section 34-103, subsection G that includes advertising in a
30 public newspaper and a qualification-based selection process.

31 25. "Services":

1 (a) Means the furnishing of labor, time or effort by a contractor or
2 subcontractor that does not involve the delivery of a specific end product
3 other than required reports and performance.

4 (b) Does not include employment agreements or collective bargaining
5 agreements.

6 26. "Specific single project" means one or more facilities at a single
7 location, at a common location or, if for a similar purpose, at multiple
8 locations.

9 27. "Subcontractor" means a person who contracts to perform work or
10 render service to a contractor or to another subcontractor as a part of a
11 contract with an agent.

12 28. "Technical registrant" means a person who provides any of the
13 professional services listed in title 32, chapter 1.

14 Sec. 2. Section 34-222, Arizona Revised Statutes, is amended to read:

15 34-222. Surety bond required; suit on bond; limitations

16 A. Except where specifically exempted by statute, before any contract
17 is executed with any person for the construction, alteration, or repair of
18 any public building, a public work or improvement of any county, city or
19 town, or officer, board or commission thereof, and irrigation, power,
20 electrical, drainage, FLOOD PROTECTION and flood control districts, tax
21 levying public improvement districts, and county or city improvement
22 districts, the person shall furnish to the agent entering into such contract
23 the following bonds which shall become binding upon the award of the contract
24 to such person, who, for purposes of this article, means "contractor":

25 1. A performance bond in an amount equal to the full contract amount
26 conditioned upon the faithful performance of the contract in accordance with
27 plans, specifications and conditions thereof. Such bond shall be solely for
28 the protection of the public body awarding the contract.

29 2. A payment bond in an amount equal to the full contract amount
30 solely for the protection of claimants supplying labor or materials to the
31 contractor or his subcontractors in the prosecution of the work provided for
32 in such contract.

1 B. Each such bond shall include a provision allowing the prevailing
2 party in a suit on such bond to recover as a part of the judgment such
3 reasonable attorneys' fees as may be fixed by a judge of the court.

4 C. Notwithstanding any other statute, each such bond shall be executed
5 solely by a surety company or companies holding a certificate of authority to
6 transact surety business in this state issued by the director of the
7 department of insurance pursuant to title 20, chapter 2, article 1. The
8 bonds shall not be executed by an individual surety or sureties, even if the
9 requirements of section 7-101 are satisfied. The bonds shall be payable to
10 the public body concerned.

11 D. Such bonds shall be filed in the office of the department, board,
12 commission, institution, agency or other contracting body awarding the
13 contract.

14 E. It shall be illegal for the invitation for bids, or any person
15 acting or purporting to act on behalf of the contracting body, to require
16 that such bonds be furnished by a particular surety company, or through a
17 particular agent or broker.

18 F. The conditions and provisions in the payment bond regarding the
19 surety's obligations shall follow the following form:

20 Now, therefore, the condition of this obligation is such, that if
21 the principal promptly pays all monies due to all persons
22 supplying labor or materials to the principal or the principal's
23 subcontractors in the prosecution of the work provided for in the
24 contract, this obligation is void. Otherwise it remains in full
25 force and effect.

26 Provided, however, that this bond is executed pursuant to the
27 provisions of title 34, chapter 2, article 2, Arizona Revised
28 Statutes, and all liabilities on this bond shall be determined in
29 accordance with the provisions, conditions and limitations of
30 title 34, chapter 2, article 2, Arizona Revised Statutes, to the
31 same extent as if they were copied at length in this agreement.
32 The prevailing party in a suit on this bond shall recover as a

1 part of the judgment reasonable attorney fees that may be fixed
2 by a judge of the court.

3 G. The conditions and provisions in the performance bond regarding the
4 surety's obligations shall follow the following form:

5 Now, therefore, the condition of this obligation is such, that if
6 the principal faithfully performs and fulfills all of the
7 undertakings, covenants, terms, conditions and agreements of the
8 contract during the original term of the contract and any
9 extension of the contract, with or without notice to the surety,
10 and during the life of any guaranty required under the contract,
11 and also performs and fulfills all of the undertakings,
12 covenants, terms, conditions and agreements of all duly
13 authorized modifications of the contract that may hereafter be
14 made, notice of which modifications to the surety being hereby
15 waived, the above obligation is void. Otherwise it remains in
16 full force and effect.

17 Provided, however, that this bond is executed pursuant to the
18 provisions of title 34, chapter 2, article 2, Arizona Revised
19 Statutes, and all liabilities on this bond shall be determined in
20 accordance with the provisions of title 34, chapter 2, article 2,
21 Arizona Revised Statutes, to the extent as if it were copied at
22 length in this agreement.

23 The prevailing party in a suit on this bond shall recover as part
24 of the judgment reasonable attorney fees that may be fixed by a
25 judge of the court.

26 H. If the prime contract or specifications require any persons
27 supplying labor or materials in the prosecution of the work to furnish
28 payment or performance bonds, these bonds shall be executed solely by a
29 surety company or companies holding a certificate of authority to transact
30 surety business in this state issued by the director of the department of
31 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the
32 provisions of any other statute, the bonds shall not be executed by an

1 individual surety or sureties, even if the requirements of section 7-101 are
2 satisfied.

3 I. All bonds given by a contractor and surety, pursuant to the
4 provisions of this article, regardless of their actual form, will be deemed
5 by law to be the form required and set forth in this article and no other.”

6 Renumber to conform

7 Page 1, lines 34, 36 and 43, after “LOT” insert “, ACRE”

8 Page 3, between lines 31 and 32, insert”

9 “Sec. 6. Section 48-2756, Arizona Revised Statutes, is amended to
10 read:

11 48-2756. Terms of bonds: form: interest rate: record of sales

12 A. All bonds issued under this chapter shall be payable in legal
13 currency of the United States, and except for the ~~refunding~~ bonds provided
14 for in ~~article~~ ARTICLES 8 AND 11 of this chapter, shall be in ten series as
15 follows:

16 1. On January 1, after the expiration of eleven years, five per cent
17 of the total number of the bonds.

18 2. On January 1, after the expiration of twelve years, six per cent.

19 3. On January 1, after the expiration of thirteen years, seven per
20 cent.

21 4. On January 1, after the expiration of fourteen years, eight per
22 cent.

23 5. On January 1, after the expiration of fifteen years, nine per cent.

24 6. On January 1, after the expiration of sixteen years, ten per cent.

25 7. On January 1, after the expiration of seventeen years, eleven per
26 cent.

27 8. On January 1, after the expiration of eighteen years, thirteen per
28 cent.

29 9. On January 1, after the expiration of nineteen years, fifteen per
30 cent.

31 10. On January 1, after the expiration of twenty years, sixteen per
32 cent.

1 B. The several enumerated percentages shall be the entire amount of
2 the issue, but each bond shall be made payable at a given time for its entire
3 amount and not for a percentage.

4 C. The bonds shall bear interest at the rate or rates set by the
5 accepted bid which shall not exceed the maximum rate of interest set forth in
6 the notice of the election, payable semiannually on January 1 and July 1 each
7 year. The principal and interest shall be payable at the office of the
8 county treasurer of the county in which the office of the board of directors
9 is located.

10 D. The bonds shall be in denominations of not less than one hundred
11 nor more than one thousand dollars each, shall be negotiable in form, and
12 signed by the president and secretary of the board of directors with the seal
13 of the district affixed thereto. The bonds of each issue shall be numbered
14 consecutively, and shall bear the date of their issue. Coupons for the
15 several installments of interest shall be attached to each bond and shall
16 bear the facsimile signature of the secretary. The bonds shall express on
17 their face that they were signed by the authority of this chapter, and shall
18 state the number of the issue of which the bonds are a part.

19 E. The secretary shall keep a record of the bonds sold, their number,
20 the date of sale, the price received and the name of the purchaser or
21 purchasers.

22 Sec. 7. Section 48-2758, Arizona Revised Statutes, is amended to read:
23 48-2758. Lien of bonds; payment of bonds

24 A. All bonds issued under the provisions OF THIS ARTICLE AND ARTICLE 8
25 of this chapter shall be a lien upon the real property included in the
26 district, and the lien of the bonds of any issue shall be a preferred lien to
27 that of any subsequent issue.

28 B. The bonds and the interest thereon shall be paid from revenues
29 derived by assessments as provided by article 5 of this chapter upon the real
30 property included in the district, and all the real property in the district
31 shall be and remain liable for assessment for payment thereof.

C. This section shall not be construed as creating, or intended to create, any lien on or to authorize any tax against any state, school or university lands included within a district.”

Renumber to conform

Page 6, line 8, after “assessment” insert “; protests against the improvement”

Line 9, before “THE” insert “A.”

Between lines 16 and 17, insert:

“B. THE OWNERS OF A MAJORITY OF THE AREA WITHIN THE PROPOSED ASSESSMENT DISTRICT MAY MAKE A WRITTEN PROTEST AGAINST THE IMPROVEMENT WITHIN TWENTY DAYS AFTER THE DATE OF THE MAILING OF THE NOTICE OF THE PASSAGE OF THE RESOLUTION OF INTENTION.

C. THE PROTEST SHALL SHOW THE LOCATION OF THE PROPERTY AND THE APPROXIMATE AMOUNT OF THE ACREAGE OWNED BY EACH SIGNER TOGETHER WITH THE SIGNER’S POST OFFICE ADDRESS. THE PROTEST SHALL BE FILED AT THE OFFICE OF THE DISTRICT AND THE DATE OF DELIVERY SHALL BE NOTED ON EACH PROTEST. PROTESTS SO DELIVERED AND ENDORSED, IF SUCH PROTESTS MEET THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION, SHALL BE A BAR TO ANY FURTHER PROCEEDINGS IN MAKING THE IMPROVEMENT FOR SIX MONTHS FROM THE DATE THE PROTEST IS FILED. IF THE PROTESTS MEET THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION, SIX MONTHS AFTER THE DATE THE PROTEST IS FILED, THE BOARD MAY INITIATE THE SAME OR SIMILAR IMPROVEMENT BY ADOPTING A NEW RESOLUTION OF INTENTION AND PROCEEDING AS IN THE FIRST INSTANCE, OR MAY FINANCE THE WORK THROUGH ANY OTHER LAWFUL METHODS.”

Line 36, strike “MAY” insert “SHALL”

Page 9, lines 10 and 45, after “LOT” insert “, ACRE OR PARCEL”

Page 11, line 25, after “DISTRICT” strike remainder of line

Strike line 26, insert “A PERFORMANCE BOND IN THE FORM PRESCRIBED IN SECTION 34-222 AND A PAYMENT BOND IN THE FORM PRESCRIBED IN 34-223.”

Line 42, after “LOTS” insert “, ACRES AND PARCELS”

Page 12, line 22, after “LOT” insert “, ACRE OR PARCEL”

Line 25, after “LOT” insert “, ACRE OR PARCEL”; after “LOTS” insert “, ACRES OR PARCELS”

- 1 Page 12, line 42, after "LOTS" insert ", ACRES OR PARCELS"
- 2 Line 45, after "LOT" insert ", ACRE OR PARCEL"
- 3 Page 13, lines 28 and 30, after "LOT" insert ", ACRE OR PARCEL"
- 4 Page 14, line 40, after "LOTS" insert ", ACRES OR PARCELS"; after "AMOUNT" strike
- 5 remainder of line
- 6 Line 41, strike "ASSESSMENTS" insert "ASSESSED AGAINST THE LOT, ACRE OR PARCEL"
- 7 Page 15, line 4, after "LOT" insert ", ACRE OR PARCEL"
- 8 Page 16, lines 26 and 45, after "LOT" insert ", ACRE OR PARCEL"
- 9 Page 17, lines 22 and 25, after "LOT" insert ", ACRE OR PARCEL"
- 10 Page 18, line 29, after "LOTS" insert ", ACRES OR PARCELS"
- 11 Page 19, lines 11 and 14, after "LOT" insert ", ACRE OR PARCEL"
- 12 Page 21, line 26, after "LOTS" insert ", ACRES"
- 13 Page 23, line 5, after "LOT" insert ", ACRE OR PARCEL"; after "LOTS" insert ",
- 14 ACRES OR PARCELS"
- 15 Line 11, after the third "THE" insert "DISTRICT'S"
- 16 Amend title to conform

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